

AMENDED IN SENATE APRIL 17, 2013

AMENDED IN SENATE APRIL 11, 2013

SENATE BILL

No. 574

Introduced by Senator Nielsen
(Coauthors: Senators Evans and Gaines)
(Coauthors: Assembly Members Dahle and Logue)

February 22, 2013

An act to amend Section 25299.57 of the Health and Safety Code, relating to underground storage tanks.

LEGISLATIVE COUNSEL'S DIGEST

SB 574, as amended, Nielsen. Underground storage tanks: corrective action.

Under existing law, Barry Keene Underground Storage Tank Cleanup Trust Fund Act of 1989, every owner of an underground storage tank is required to pay a storage fee for each gallon of petroleum placed in the tank. The fees are required to be deposited in the Underground Storage Tank Cleanup Fund. The money in the fund may be expended by the State Water Resources Control Board, upon appropriation by the Legislature, for various purposes, including the payment of claims of up to \$1,500,000 per occurrence, as defined, to aid owners and operators of petroleum underground storage tanks who take corrective action to clean up unauthorized releases from those tanks and the payment of claims for certain 3rd-party injuries and damages. Existing law requires the board to pay a claim for the costs of corrective action to a person who owns property on which is located a release from a petroleum underground storage tank that has been the subject of a corrective action, and for which additional corrective action is required because of additionally discovered contamination from the previous

release, if the person who carried out the earlier and completed corrective action was eligible for, and applied for, reimbursement pursuant to specified provisions, only to the extent that the amount of reimbursement for the earlier corrective action did not exceed the amount of \$1,500,000.

This bill would additionally impose as a requirement for that reimbursement that the subject tank has been removed. The bill would also require the board to pay a claim for the costs of corrective action to a person who owns property on which is located a release from a petroleum underground storage tank that has been removed if the site has been the subject of a corrective action, additional corrective action is required because of additionally discovered contamination from the previous release, the person *who* owns the property *meets specified requirements* and is required to perform corrective action pursuant to those provisions because of additionally discovered contamination, and the person who carried out the earlier and completed corrective action did not apply for reimbursement, as prescribed.

This bill would become operative only if legislation is enacted in the 2013–14 Regular Session and becomes operative that extends the January 1, 2014, reversion date in a specified provision of the Health and Safety Code to a date that is after January 1, 2014, relative to petroleum underground storage tank fees.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 25299.57 of the Health and Safety Code
2 is amended to read:
3 25299.57. (a) If the board makes the determination specified
4 in subdivision (d), the board may only pay for the costs of a
5 corrective action that exceed the level of financial responsibility
6 required to be obtained pursuant to Section 25299.32, but not more
7 than one million five hundred thousand dollars (\$1,500,000) for
8 each occurrence. In the case of an owner or operator who, as of
9 January 1, 1988, was required to perform corrective action, who
10 initiated that corrective action in accordance with Division 7
11 (commencing with Section 13000) of the Water Code or Chapter
12 6.7 (commencing with Section 25280), and who is undertaking
13 the corrective action in compliance with waste discharge

1 requirements or other orders issued pursuant to Division 7
2 (commencing with Section 13000) of the Water Code or Chapter
3 6.7 (commencing with Section 25280), the owner or operator may
4 apply to the board for satisfaction of a claim filed pursuant to this
5 article. The board shall notify claimants applying for satisfaction
6 of claims from the fund of eligibility for reimbursement in a prompt
7 and timely manner and that a letter of credit or commitment that
8 will obligate funds for reimbursement shall follow the notice of
9 eligibility as soon thereafter as possible.

10 (b) (1) For claims eligible for reimbursement pursuant to
11 subdivision (c) of Section 25299.55, the claimant shall submit the
12 actual cost of corrective action to the board, which shall either
13 approve or disapprove the costs incurred as reasonable and
14 necessary. At least 15 days before the board proposes to disapprove
15 the reimbursement of corrective action costs that have been
16 incurred on the grounds that the costs were unreasonable or
17 unnecessary, the board shall issue a notice advising the claimant
18 and the lead agency of the proposed disallowance, to allow review
19 and comment.

20 (2) The board shall not reject any actual costs of corrective
21 action in a claim solely on the basis that the invoices submitted
22 fail to sufficiently detail the actual costs incurred, if all of the
23 following apply:

24 (A) Auxiliary documentation is provided that documents to the
25 board's satisfaction that the invoice is for necessary corrective
26 action work.

27 (B) The costs of corrective action work in the claim are
28 reasonably commensurate with similar corrective action work
29 performed during the same time period covered by the invoice for
30 which reimbursement is sought.

31 (C) The invoices include a brief description of the work
32 performed, the date that the work was performed, the vendor, and
33 the amount.

34 (c) (1) For claims eligible for prepayment pursuant to
35 subdivision (c) of Section 25299.55, the claimant shall submit the
36 estimated cost of the corrective action to the board, which shall
37 approve or disapprove the reasonableness of the cost estimate.

38 (2) If the claim is for reimbursement of costs incurred pursuant
39 to a performance-based contract, Article 6.5 (commencing with
40 Section 25299.64) shall apply to that claim.

(d) Except as provided in subdivision (j), a claim specified in subdivision (a) may be paid if the board makes all of the following findings:

(1) There has been an unauthorized release of petroleum into the environment from an underground storage tank.

(2) The claimant is required to undertake or contract for corrective action pursuant to Section 25296.10, under the federal act, or under Section 6973 of Title 42 of the United States Code, or, as of January 1, 1988, the claimant has initiated corrective action in accordance with Division 7 (commencing with Section 13000) of the Water Code.

(3) The claimant has complied with Section 25299.31.

(4) (A) Except as provided in subparagraphs (B), (C), and (F), the claimant has complied with the permit requirements of Chapter 6.7 (commencing with Section 25280). A claimant shall obtain a permit required by subdivision (a) of Section 25284 for the underground storage tank that is the subject of the claim when the claimant becomes subject to subdivision (a) of Section 25284 or when the applicable local agency begins issuing permits pursuant to subdivision (a) of Section 25284, whichever occurs later.

(B) A claimant who acquires real property on which an underground storage tank is situated and, despite the exercise of reasonable diligence, was unaware of the existence of the underground storage tank when the real property was acquired, has obtained a permit required by subdivision (a) of Section 25284 for the underground storage tank that is the subject of the claim within a reasonable period, not to exceed one year, from when the claimant should have become aware of the existence of the underground storage tank, or when the applicable local agency began issuing permits pursuant to Section 25284, whichever occurs later.

(C) All claimants who file their claim on or after January 1, 2008, and who do not obtain a permit required by subdivision (a) of Section 25284 in accordance with subparagraph (A) or (B) may seek a waiver of the requirement to obtain a permit. The board shall waive the provisions of subparagraphs (A) and (B) as a condition for payment from the fund if the board finds all of the following:

(i) The claimant was unaware of the permit requirement, and upon becoming aware of the permit requirement, the claimant

1 complies with either subdivision (a) of Section 25284 or Section
2 25298 and the regulations adopted to implement those sections
3 within a reasonable period, not to exceed one year, from when the
4 claimant became aware of the permit requirement.

5 (ii) Prior to submittal of the application to the fund, the claimant
6 has complied with Section 25299.31 and has obtained and paid
7 for all permits currently required by this paragraph.

8 (iii) Prior to submittal of the application to the fund, the claimant
9 has paid all fees, interest, and penalties imposed pursuant to Article
10 5 (commencing with Section 25299.40), and Part 26 (commencing
11 with Section 50101) of Division 2 of the Revenue and Taxation
12 Code, for the underground storage tank that is the subject of the
13 claim.

14 (D) (i) A claimant exempted pursuant to subparagraph (C) and
15 who has complied, on or before December 22, 1998, either with
16 subdivision (a) of Section 25284 or Section 25298 and the
17 regulations adopted to implement those sections, shall obtain a
18 level of financial responsibility twice as great as the amount that
19 the claimant is otherwise required to obtain pursuant to subdivision
20 (a) of Section 25299.32, but not less than ten thousand dollars
21 (\$10,000). All other claimants exempted pursuant to subparagraph
22 (C) shall obtain a level of financial responsibility that is four times
23 as great as the amount that the claimant is otherwise required to
24 obtain pursuant to subdivision (a) of Section 25299.32, but not
25 less than twenty thousand dollars (\$20,000).

26 (ii) The board may waive the requirements of clause (i) if the
27 claimant can demonstrate that the conditions specified in clauses
28 (i) to (iii), inclusive, of subparagraph (C) were satisfied prior to
29 the causing of any contamination. That demonstration may be
30 made through a certification issued by the permitting agency based
31 on a site evaluation and tank tests at the time of permit application
32 or in any other manner acceptable to the board.

33 (E) All claimants who file a claim before January 1, 2008, and
34 who are not eligible for a waiver of the permit requirements
35 pursuant to applicable statutes or regulations in effect on the date
36 of the filing of the claim may resubmit a new claim pursuant to
37 subparagraph (C) on or after January 1, 2008. The board shall rank
38 all claims resubmitted pursuant to subparagraph (C) lower than
39 all claims filed before January 1, 2008, within their respective
40 priority classes specified in subdivision (b) of Section 25299.52.

(F) The board shall waive the provisions of subparagraph (A) as a condition for payment from the fund for a claimant who filed his or her claim on or after January 1, 2008, and before July 1, 2009, but is not eligible for a waiver of the permit requirement pursuant to the regulations adopted by the board in effect on the date of the filing of the claim, and who did not obtain or apply for a permit required by subdivision (a) of Section 25284, if the board finds all of the following:

(i) The claim is filed pursuant to paragraph (2) of subdivision (h) of Section 25299.54 and the claim otherwise satisfies the eligibility requirements of that paragraph.

(ii) The claimant became the owner or de facto owner of an underground storage tank prior to December 22, 1998.

(iii) The claimant did not, and does not, operate the underground storage tank.

(iv) Within three years after becoming the owner or de facto owner of the underground storage tank but not after December 22, 1998, the claimant caused the underground storage tank to be removed and closed in accordance with applicable law, and commenced no later than December 22, 1998, to perform corrective action pursuant to Section 25296.10 of this code or pursuant to Division 7 (commencing with Section 13000) of the Water Code.

(G) The board shall rank all claims submitted pursuant to subparagraph (F) in their respective priority classes specified in subdivision (b) of Section 25299.52 in the order in which the claims are received by the board, but subsequent to any claim filed on a previous date in each of those priority classes.

(H) For purposes of clauses (ii) and (iv) of subparagraph (F), “de facto owner of an underground storage tank” means a person who purchases or otherwise acquires real property, as defined in subparagraph (D) of paragraph (5) of subdivision (h) of Section 25299.54, and has actual possession of, and control over, an underground storage tank that has been abandoned by its previous owner.

(5) The board has approved either the costs incurred for the corrective action pursuant to subdivision (b) or the estimated costs for corrective action pursuant to subdivision (c).

(6) The claimant has paid all fees, interest, and penalties imposed pursuant to Article 5 (commencing with Section 25299.40), and Part 26 (commencing with Section 50101) of Division 2 of the

1 Revenue and Taxation Code, for the underground storage tank that
2 is the subject of the claim.

3 (e) The board shall provide the claimant, whose cost estimate
4 has been approved, a letter of commitment authorizing payment
5 of the costs from the fund.

6 (f) The claimant may submit a request for partial payment to
7 cover the costs of corrective action performed in stages, as
8 approved by the board.

9 (g) (1) A claimant who submits a claim for payment to the
10 board shall submit multiple bids for prospective costs as prescribed
11 in regulations adopted by the board pursuant to Section 25299.77.

12 (2) A claimant who submits a claim to the board for the payment
13 of professional engineering and geologic work shall submit
14 multiple proposals and fee estimates, as required by the regulations
15 adopted by the board pursuant to Section 25299.77. The claimant's
16 selection of the provider of these services is not required to be
17 based on the lowest estimated fee, if the fee estimate conforms
18 with the range of acceptable costs established by the board.

19 (3) A claimant who submits a claim for payment to the board
20 for remediation construction contracting work shall submit multiple
21 bids, as required in the regulations adopted by the board pursuant
22 to Section 25299.77.

23 (4) Paragraphs (1), (2), and (3) do not apply to a tank owned or
24 operated by a public agency if the prospective costs are for private
25 professional services within the meaning of Chapter 10
26 (commencing with Section 4525) of Division 5 of Title 1 of the
27 Government Code and those services are procured in accordance
28 with the requirements of that chapter.

29 (h) The board shall provide, upon the request of a claimant,
30 assistance to the claimant in the selection of contractors retained
31 by the claimant to conduct reimbursable work related to corrective
32 actions. The board shall develop a summary of expected costs for
33 common corrective actions. This summary of expected costs may
34 be used by claimants as a guide in the selection and supervision
35 of consultants and contractors.

36 (i) (1) To the extent funding is available, the board shall pay,
37 within 60 days from the date of receipt of an invoice of
38 expenditures, all costs specified in the work plan developed
39 pursuant to Section 25296.10, and all costs that are otherwise

1 necessary to comply with an order issued by a local, state, or
2 federal agency.

3 (2) If corrective action costs, third-party compensation costs,
4 or regulatory technical assistance costs submitted by a claimant
5 are approved for reimbursement by the board but funding is not
6 available for payment to the claimant at the time of approval, the
7 board shall reimburse carrying costs incurred by the claimant after
8 November 7, 2008, but before June 30, 2010, subject to all of the
9 following limitations:

10 (A) The reimbursement for carrying costs shall not exceed the
11 carrying costs actually incurred by the claimant from the date the
12 corrective action costs, third-party compensation costs, or
13 regulatory technical assistance costs are approved for payment by
14 the board until the date that a check for the reimbursement request
15 is issued by the Controller.

16 (B) The reimbursement for carrying costs shall not exceed an
17 amount equivalent to a maximum annual percentage rate of 7
18 percent as applied to the amount approved for reimbursement and
19 for the period calculated pursuant to subparagraph (A).

20 (C) The board shall not reimburse carrying costs that amount
21 to less than one hundred dollars (\$100) per reimbursement request.

22 (D) The board shall not reimburse carrying costs that exceed 9
23 percent of the total amount of costs approved for the reimbursement
24 to which the carrying costs apply.

25 (E) A claimant may submit a request for reimbursement of
26 carrying costs after receipt of fund reimbursement for the corrective
27 action costs, third-party compensation costs, or regulatory technical
28 assistance costs to which the carrying costs apply. Additional
29 carrying costs associated with a reimbursement request for carrying
30 costs submitted pursuant to this paragraph are not eligible for
31 payment.

32 (F) This paragraph does not apply to tank owners or operators
33 that are not described in paragraph (1), (2), or (3) of subdivision
34 (b) of Section 25299.52.

35 (3) For the purposes of paragraph (2), “carrying cost” means
36 the interest expense incurred by a claimant to acquire money to
37 pay costs approved for reimbursement by the board but for which
38 reimbursement is delayed because funds are unavailable.

39 (j) (1) The board shall pay a claim of not more than three
40 thousand dollars (\$3,000) per occurrence for regulatory technical

1 assistance to an owner or operator who is otherwise eligible for
2 reimbursement under this chapter.

3 (2) For the purposes of this subdivision, regulatory technical
4 assistance is limited to assistance from a person, other than the
5 claimant, in the preparation and submission of a claim to the fund.
6 Regulatory technical assistance does not include assistance in
7 connection with proceedings under Section 25296.40, 25299.39.2,
8 or 25299.56 or any action in court.

9 (k) (1) Notwithstanding any other provision of this section, the
10 board shall pay a claim *pursuant to this subdivision for a claim*
11 *subject to paragraph (2) or (3)* for the costs of corrective action
12 to a person who owns property on which is located a release from
13 a petroleum underground storage tank that has been removed, *if*
14 *the site has been the subject of a completed corrective action, and*
15 *for which additional corrective action is required because of*
16 *additionally discovered contamination from the previous release*
17 *as follows: release:*

18 ~~(A) If~~

19 (2) (A) *The board shall pay a claim pursuant to this paragraph,*
20 *if the person who carried out the earlier and completed corrective*
21 *action was eligible for, and applied for, reimbursement pursuant*
22 *to subdivision (b), reimbursement (b).*

23 (B) *Reimbursement* for additional corrective action shall be
24 available only to the extent that the amount of reimbursement for
25 the earlier corrective action did not exceed the amount of
26 reimbursement authorized by subdivision (a). ~~Reimbursement~~

27 (C) *Reimbursement* to a claimant on a reopened site *pursuant*
28 *to this paragraph* shall occur when funds are available, and *the*
29 *reimbursement commitment shall be made ahead of any new letters*
30 *of commitment to be issued, as of the date of the reopening of the*
31 *claim, if funding has occurred on the original claim, in which case*
32 *claim.*

33 (D) *If funding has not occurred on the original claim, funding*
34 *shall occur at the time it would have occurred under the original*
35 *claim.*

36 ~~(B) If the~~

37 (3) (A) *The board may reimburse a claim pursuant to this*
38 *paragraph, if all of the following conditions are satisfied:*

1 (i) The person who carried out the earlier and completed
2 corrective action did not apply for reimbursement pursuant to
3 subdivision ~~(b)~~, the (b).

4 (ii) The person who owns the property ~~and is required to~~
5 perform corrective action because of additionally discovered
6 ~~contamination may be reimbursed for incurred corrective action~~
7 ~~costs that are reasonable and necessary. The contamination.~~

8 (iii) The person who owns the property is the owner or operator
9 of an underground storage tank located on the property at the time
10 of the application to the fund.

11 (iv) The person who owns the property is in compliance with
12 the requirements to pay the fee pursuant to Article 5 (commencing
13 with Section 25299.41).

14 (v) The person who owns the property is in compliance with the
15 requirements to obtain a permit pursuant to Chapter 6.7
16 (commencing with Section 25280).

17 (B) The board shall assign the person submitting a claim
18 pursuant to this paragraph a priority ranking consistent with the
19 categories described in Section ~~25299.52, notwithstanding the~~
20 ~~requirement to be an owner or operator. Reimbursement shall be~~
21 ~~limited to the amounts described in Section 25299.59. 25299.52.~~

22 (C) The board shall limit reimbursement for a claim pursuant
23 to this paragraph to the amounts described in Section 25299.59
24 and for the incurred corrective action costs that are necessary and
25 reasonable.

26 ~~(2)~~

27 (4) For purposes of this subdivision, a corrective action is
28 completed when the local agency or regional board with
29 jurisdiction over the site or the board issues a closure letter pursuant
30 to subdivision (g) of Section 25296.10.

31 (l) (1) Claims for reimbursement of corrective action costs that
32 are received by the board more than 365 days after the date of
33 issuance of a closure letter issued pursuant to subdivision (g) of
34 Section 25296.10 or after the issuance or activation of a letter of
35 commitment, whichever occurs later, shall not be reimbursed unless
36 either of the following applies:

37 (A) Claims for corrective action costs are submitted to the board
38 pursuant to paragraph (1) of subdivision (k).

39 (B) The board finds that submission within the time period
40 specified in this paragraph was beyond the claimant's reasonable

1 control, ongoing work is required for closure that will result in
2 submission of claims beyond that time period, or that under the
3 circumstances of the particular case, it would be unreasonable or
4 inequitable to impose the time period specified in this paragraph.

5 (2) This section does not limit or abrogate the rights of a
6 claimant in disputing reimbursement determinations or suspension
7 of claims.

8 (3) For cases that have been issued a closure letter pursuant to
9 subdivision (g) of Section 25296.10 prior to January 1, 2012, the
10 board shall notify claimants of the 365-day filing deadline specified
11 in paragraph (1) on or before March 31, 2012, or upon issuance
12 of a letter of commitment, whichever occurs later.

13 SEC. 2. This act shall become operative only if legislation is
14 enacted in the 2013–14 Regular Session and becomes operative
15 that extends the January 1, 2014, reversion date in subdivision (f)
16 of Section 25299.43 of the Health and Safety Code to a date that
17 is after January 1, 2014.